IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET
CIVIL APPLICATION NO.5277 OF 2005
IN
FIRST APPEAL ST.NO.13204 OF 2005

Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

Mr.Krishnan i/b Mr.H.M.Rane for Appellant
Mr.V.B.Tapkir for Respondent Nos.1 to 4

CORAM: A.S.OKA, J.
DATED: APRIL 21, 2006.

P.C.:

1. Heard learned Advocate for the Applicant and the learned Advocate for the Respondent Nos.1 to 4. This application is for condonation of delay in preferring the Appeal. The Appeal is filed by the Appellant-Insurance Company for challenging the Judgment and Award passed by the Motor Accident Claims Tribunal in a Claim Petition filed under section 166 of the Motor Vehicles Act,1988.

2. My attention has been invited to the decision of the Apex Court reported in A.I.R. 2002 S.C. page 3350 (National Insurance Company Ltd.Chandigarh Vs. Nicolletta Rohtagi and others). The Apex Court has held that the Appeal at the instance of insurance company is

maintainable only in two contingencies. The first is when the grounds specified under Sub Section 2 of Section 149 of the said Act of 1988 are available and the second is when a permission to defend the claim on behalf of the insured has been granted in favour of the Insurance company under section 170 of the said Act of 1988.

3. In the present case, admittedly the permission under section 170 of the said Act of 1988 is not granted. It is also apparent that the Appeal is not preferred on any ground which is covered by sub section 2 of Section 149 of the said Act of 1988. In view of the aforesaid decision of the Apex Court, the Appeal is not maintainable. Hence, delay in preferring the Appeal which is not maintainable cannot be condoned. Accordingly, Application is rejected on the ground that the Appeal itself is not maintainable.

4. The Appellant/Applicant will be entitled to refund of the deposit made in this Court in compliance with Section 173 of the said Act of 1988.

Judge.